

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22/08/2003

CORAM

THE HONOURABLE MR.JUSTICE V.KANAGARAJ

CRIMINAL ORIGINAL PETITION No.9798 of 2003

AND

CRL.M.P.NO.3342 OF 2003

1. Dr.J.S.Moses
2. Mrs.Lalitha Moses
3. Mr.James Moses ... Petitioners

-Vs-

1. State by
Inspector of Police,
W-2 All Women Police Station,
South Chennai.

2. Jayanthi D.Moses
W/o James C.Moses. ... Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure for the relief as stated therein.

For petitioner : Mr.A.Natarajan.

For 1st Respondent : Mr.A.N.Thambidurai,
Govt.Advocate(Crl.side)

For R.2 : Mr.K.Ashokan, Senior Counsel,
for Mr.S.Sasikumar.

:O R D E R

The petitioners who are the accused in the case registered by the first respondent in Crime No.2188 of 2002 has filed the above Criminal Original Petition praying to call for the records of the said case and quash the same.

2. In the affidavit filed in support of the above Criminal Original Petition sworn by the first petitioner, he would submit that the second petitioner is his wife and the third petitioner is his son who married the second respondent herein in U.S.A., registering the same on 27.9.12001 and the couple started residing at Honolulu, Hawaii; that on 8.11.2001 the second respondent left Honolulu, Hawaii along with her father, taking all her

belongings at her free will and not to come back again, resulting in the third petitioner filing a divorce petition, since his wife deserted him and the said case was filed before the Family Court, First Circuit in the State of Hawaii, U.S.A., which was even contested by the second respondent and ultimately a decree of divorce was granted, thus dissolving the matrimonial bondage on 24.5.2002.

3. The further case of the petitioners is while such being the state of affairs Mrs. Jayanthi the second respondent herein, has lodged a complaint before the All Women Police Station, Adayar against all the petitioners for an offence punishable under Sections 420, 498(A), 323 and 506(2) of I.P.C. r/w Section 4 of the Dowry Prohibition Act, on which the first respondent has registered a case in Crime No.122 of 2002 and the same is pending investigation. Further stating that all the events regarding marriage till the divorce consecutively took place in U.S.A., and not a single event had taken place in India much less within the jurisdiction of the first respondent police station limits and the allegations are all false, the petitioners would ultimately come forward to file the above Criminal Original Petition seeking the relief extracted supra.

4. During arguments, the learned counsel appearing on behalf of the petitioner would lay emphasis on those facts and circumstances brought forth in the pleadings of the above Criminal Original Petition and would pray for the quashing of the FIR.

5. On the part of the learned Government Advocate appearing on behalf of the first respondent, he would vehemently oppose the above Criminal Original Petition stating that on true facts and circumstances brought forth by the second respondent in a complaint the case has been rightly registered under the appropriate provisions of law and the first respondent police have taken up the investigation of the same and there is no reason for any interference to be caused by this Court since no illegality has taken place or any irregular procedure adopted and would pray to dismiss the above Criminal Original Petition.

6. On the part of the learned senior counsel appearing on behalf of the second respondent, he would submit that though there is absolutely no legal impediment for initiating action against those who are citizens of India whether on the high seas or elsewhere, still, part of the transactions have taken place only within the jurisdiction of the first respondent police and therefore, within the meaning of Section 188 of Cr.P.C. the first respondent police is quite competent to register and investigate into the case on facts revealed in the complaint lodged by the second respondent.

7. At this juncture, the learned counsel would also cite a judgment of the Apex Court reported in A.V. MOHAN RAO AND ANOTHER vS. M. KISHAN RAO AND ANOTHER (2002 SUPREME COURT CASES (Cri)1281), wherein it is held:

□Under Sections 4 & 188 of the Cr.P.C. even if the offence is committed by a citizen of India outside the country the same is subject to the jurisdiction of courts of India.□

8. Yet another judgment cited by the learned senior counsel is also that of the Hon^{ble} Apex Court reported in RAJESH BAJAJ vs. STATE NCT OF DELHI AND OTHERS (1999 SUPREME COURT CASES (Cri) 401), wherein it is held: [The meaning of [complaint] as defined under Section 2(d) of Cr.P.C. it is not essential that it should verbatim contain all the ingredients of the offence alleged so long as the factual foundation for the offence has been laid.]

On such arguments the learned senior counsel would exhort that there is absolut

ely no need or necessity to quash the FIR registered by the first respondent and the only order that the Court could do in the circumstances of the case is to dismiss the above Criminal Original Petition and would pray for the said relief.

9. A careful perusal of the complaint lodged by the second respondent, based on which the case has been registered against the petitioners is not only shocking but also quite contrary to the averments of the above Criminal Original Petition and since the true version of the parties on facts could be determined only on a full trial held in the case registered by the first respondent so as to pass its judgment on merits and in accordance with law, this Court does not think it is necessary to cause its interference into the case registered by the first respondent much less to quash the FIR on a subjective satisfaction since this Court is not supplied with such such materials to decide the matter and hence the only answer lies in the trial to be held by the trial Court.

10. In the recent judgment of the Honourable Apex Court delivered in UNION OF INDIA vs. PRAKASH P.HINDUJA AND ANOTHER reported in IV (200 3) Supreme Laws Today 335, the Honourable Apex Court, considering the point that 'whether the High Court can exercise its inherent powers under Section 482 of the Code of Criminal Procedure in a matter where the investigation is pending', and following the earlier decisions reported in (1) AIR 1945 PC 18 (EMPEROR vs. NAZIR AHMAD), (2) AIR 1963 SC 447 (STATE OF WEST BENGAL vs. S.N.BASAK) (3) 1963 SC 117 (ABHINANDAN JHA AND OTHERS vs. DINESH MISHRA), and (4) 1980 (1) SCC 554 (STATE OF BIHAR AND ANOTHER vs. JAC SALDANHA AND

OTHERS) has held:

"... the legal position is absolutely clear and also settled by judicial authorities that the Court would not interfere with the investigation or during the course of investigation which would mean from the time of the lodging of the First Information Report till the submission of the report by the officer-in-charge of police station in Court under Section 173(2) Cr.P.C., this field being exclusively reserved for the Investigating Agency."

11.

Since in the case in hand it is reported that the investigation is pending, the proposition held by the Honourable Apex Court would squarely become applicable to the case in hand and the above criminal original petition becomes liable only to be dismissed.

In result,

- (i) the above Criminal Original Petition is devoid of merits and the same is dismissed as such;
- (ii) consequently, CrI.M.P.No.3342 of 2003 is closed.

22.8.2003.

Index: Yes/No

Internet: Yes/No

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To

1. The Inspector of Police, W-2 All Women Police Station,
South Chennai.

2. The Public Prosecutor, High Court, Madras.

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